



Chesterfield County, Virginia

Memorandum

DATE: AUGUST 6, 2007

TO: CHESTERFIELD COUNTY PLANNING COMMISSION

FROM: *B.M. for* KIRKLAND A. TURNER, DIRECTOR OF PLANNING

SUBJECT: PUBLIC HEARING AUGUST 21, 2007 – CODE AMENDMENT RELATING TO SUBSTANTIAL ACCORD DETERMINATIONS

The Commission requested consideration of various amendments to require public hearings for all proposed public facilities to determine their compliance with the Comprehensive Plan (Substantial Accord Determination).

The Administrative Policy has been modified in accordance with the Commission's desires to require public hearings for all substantial accord determinations. The modified policy is attached.

Based upon that modification, it would be appropriate to amend the Zoning Ordinance to clarify that all such determinations require a public hearing. The proposed amendment is attached.



CHESTERFIELD COUNTY ADMINISTRATIVE POLICIES AND PROCEDURES

Department: Planning
Subject: Substantial Accord Policy for Public Facilities

Policy Number: 10-1
Supersedes: 11/15/02
Date Issued: ____/07

I. PURPOSE

The purpose of this policy is to assure that certain proposed facilities, such as those described below, are "substantially in accord" with the Chesterfield County Comprehensive Plan. This authority is found in the County Charter and the Code of Virginia. By establishing this procedure, the Substantial Accord Policy promotes coordinated planning in the siting of public facilities and maintains compatible land use patterns, thereby further improving the County's ability to provide effective and cost efficient services to the public.

II. DEFINITION OF A PUBLIC FACILITY

Public areas, facilities and uses (hereinafter referred to collectively as "Public Facilities") include, but are not limited to, streets, parks or other public areas and connections thereto, public buildings or structures, public utility facilities and public service corporation facilities, whether such areas, facilities or uses are publicly or privately owned; provided, however, that such terms do not include railroad facilities; electrical transmission lines of 150 kilovolts or more subject to review and approval by the Virginia State Corporation Commission; public telecommunication facilities subject to review and approval by the Virginia Public Telecommunications Board; or public facilities constructed by the State or Federal government.

III. GENERAL RULE

Except as stated herein, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility, whether publicly or privately owned, shall be constructed, established or authorized unless it is first determined to be substantially in accord with the County's adopted Comprehensive Plan or element thereof (i.e., *Plan for Chesterfield*, *Public Facilities Plan*, the *Thoroughfare Plan* and Countywide special plans).

IV. FACILITIES EXCEPTED FROM SUBSTANTIAL ACCORD REVIEW

- A. **Public Roads** – Public roads, which are identified within, but not the entire subject of submission of a subdivision plat or site plan submission to be constructed in accordance with the construction and design standards contained within the Chesterfield County Subdivision or Zoning Ordinance, are excepted from the requirement of a substantial accord determination.
- B. **Public Facilities Required as a Condition of Zoning** – A Public Facility which has been approved by the Board of Supervisors through acceptance or imposition of a zoning condition and which is identified within, but is not the entire subject of, a subdivision plat or site plan submission is excepted from the requirement of a substantial accord determination.
- C. **Board Approved Public or Private Facility** – Any public or private public facility which has been approved by the Board of Supervisors following a public hearing held pursuant to the County's Zoning Ordinance so long as such public or private facility or use remains subject to the requirements of the Zoning Ordinance.

- D. **Service Extensions and Repairs** – Paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations are excepted from the requirement of a substantial accord determination unless involving a change in location or extent of a street or public area.
- E. **Projects not Involving Substantial Change in Scale of Existing Facility** – Improvements to Public Facilities at existing, approved sites which are necessary to the primary site purpose and which do not involve a significant change in scale or level of facility service are excepted from the requirement of a substantial accord determination. Such excepted projects may include building additions, replacement, upgrade, or phased completion of a facility complex. However, if a facility is to be added to an existing site, which expands the level of service beyond the original site purpose, such a project will not be excepted from the requirement of a substantial accord determination. For example, a regional size swimming pool proposed at an existing neighborhood park will require substantial accord approval.
- F. **Railroads; Electrical Transmission Lines; Public Television and Radio** – Railroad facilities; electrical transmission lines of 150 kilovolts or more subject to review and approval by the Virginia State Corporation Commission; and public telecommunication facilities subject to review and approval by the Virginia Public Telecommunications Board are excepted from the requirement of a substantial accord determination.
- G. **State and Federal Facilities** – Public Facilities constructed by the State or Federal Government are excepted from the requirement of a substantial accord determination.

V. SUBSTANTIAL ACCORD APPLICATION

- A. **Pre-Application Conference** – Prior to making an application for Substantial Accord Determination, an applicant or their agent shall have a pre-application conference with the Planning Department and other co-reviewing agencies.
- B. **Applications for Substantial Accord Determinations** – With respect to any proposed Public Facility, a request for substantial accord determination must be made on an application form supplied by the Planning Department. The persons entitled to initiate an application are identified in the zoning ordinance. However, any application initiated by the Director of a County Department or Office must first obtain approval from the County Administrator or his designee. The Director of Planning shall promptly examine all applications to determine whether they are in proper form, and shall advise the applicant of the date on which his application was accepted for review, or what further information is required to constitute a satisfactory application. A request for a substantial accord determination shall not be deemed to have been made until all required information is received by the Planning Department.
- C. **Fee** – The cost of processing each request as required by the Zoning Ordinance shall be paid simultaneously with the filing of the application. Chesterfield County departments, with the exception of enterprise funded departments and the school board, will not be required to pay this fee.

VI. SUBSTANTIAL ACCORD DETERMINATION PROCEDURE

- A. **Review by the Director of Planning**—Upon receipt of an application for a substantial accord determination, the Director of Planning shall analyze the general location, character and physical extent of the proposed public facility in light of the adopted elements of the County's Comprehensive Plan, including the *Thoroughfare Plan* and the *Public Facilities Plan*. The Director of Planning shall examine the siting and planning criteria contained in those

documents and shall solicit comments from relevant co-reviewing agencies. The Director of Planning shall then make a recommendation to the Planning Commission regarding compliance with the County's Compliance Plan.

B. Consideration by the Planning Commission

- 1 **Public Hearing** – The Commission shall consider the general location, character and physical extent of the proposed Public Facility in relation to the adopted elements of the County's Comprehensive Plan and siting criteria contained in such documents. In addition, the Commission shall hold a public hearing and consider public comments and other relevant factors in arriving at its substantial accord determination, which may be conditional.
- 2 Failure of the Planning Commission to approve or disapprove a request for a substantial accord determination within sixty (60) days from receipt of proper application in the Planning Department, unless such time is extended by the Board of Supervisors or the applicant requests a deferral, shall be deemed approval by the Commission. Subject to any contrary instructions from the Board of Supervisors, and time permitting, the Commission may defer any request to a subsequent meeting.

VII. NOTIFICATION OF COMMISSION'S DECISION

The Director of Planning shall promptly file with the Clerk of the Board of Supervisors a written report of each substantial accord determination made by the Planning Commission indicating whether the Commission approved or disapproved such request and the reasons therefore. The Director of Planning shall also promptly notify the applicant of the decision of the Planning Commission.

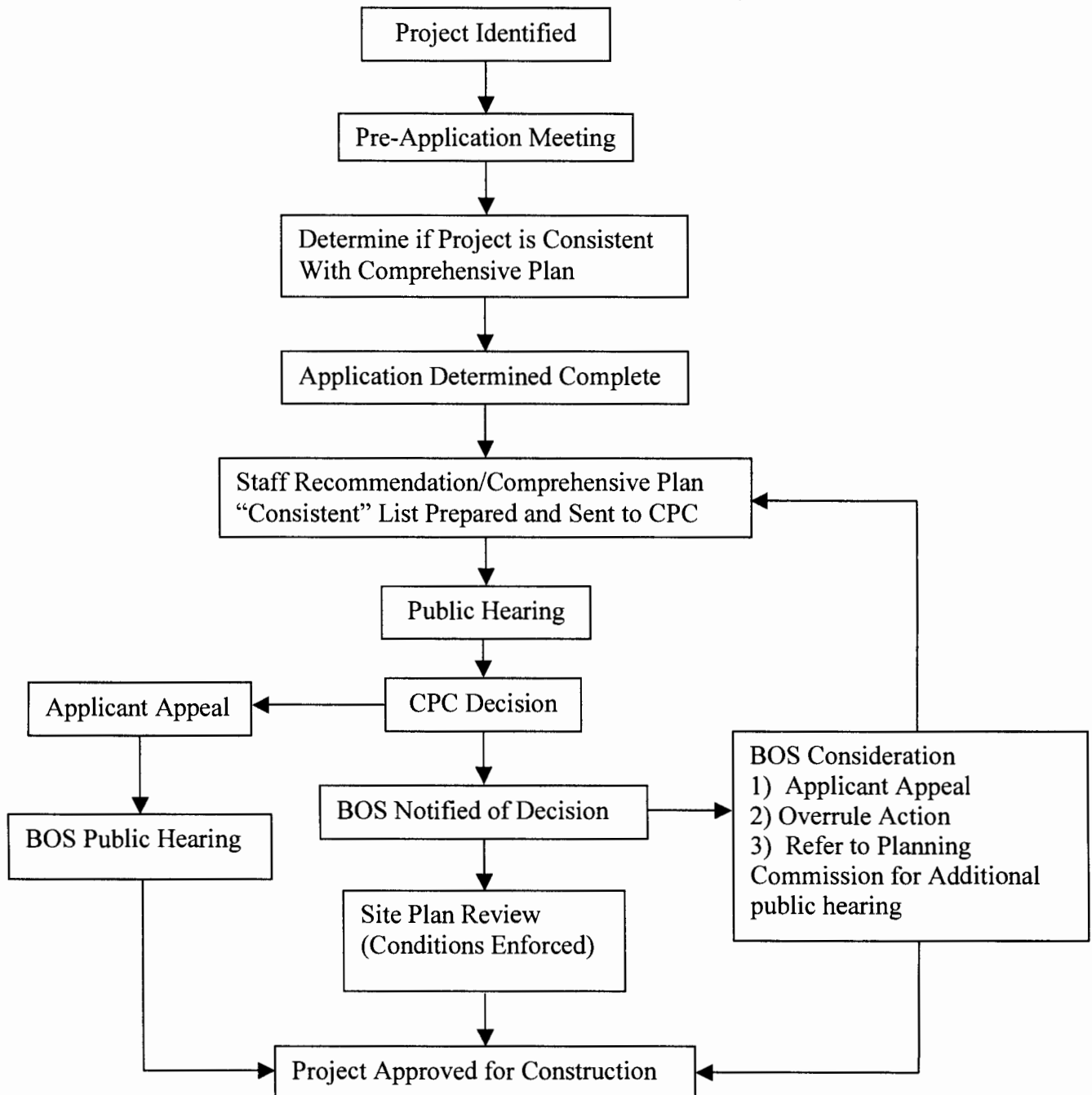
VIII. APPEALS BY THE APPLICANT

The applicant may appeal the decision of the Planning Commission by filing with the Director of Planning within ten (10) days following the Commission's decision a written petition to the Board of Supervisors setting forth the reasons for the appeal. Any appeal by the applicant to the Board of Supervisors must be heard and determined by the Board within sixty (60) days from the date of its filing.

IX. REVIEW BY THE BOARD OF SUPERVISORS

By a majority vote of its members, the Board of Supervisors may overrule a substantial accord determination made by the Planning Commission, or refer the matter back to the Planning Commission directing that an additional public hearing be held, after notice as required by the County Code, and a new determination be made within a specified time period.

**SUBSTANTIAL ACCORD DETERMINATION PROCESS
CHESTERFIELD COUNTY**



AN ORDINANCE TO AMEND THE CODE OF THE COUNTY
OF CHESTERFIELD, 1997, AS AMENDED, BY AMENDING
AND RE-ENACTING SECTIONS 19-5, 19-6, 19-24, 19-25 and 19-301 OF
THE ZONING ORDINANCE RELATING TO SUBSTANTIAL
ACCORD DETERMINATIONS

BE IT ORDAINED by the Board of Supervisors of Chesterfield County:

(1) That Sections 19-5, 19-6, 19-24, 19-25 and 19-301 of the Code of the County of Chesterfield, 1997, as amended, is amended and re-enacted to read as follows:

Sec. 19-5. Enforcement.

(a) (1) *General Enforcement Duties of Director of Planning.*

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(2) *Enforcement of conditions.* The director of planning shall administer and enforce conditions attached to zoning approvals; and development approvals ~~and substantial accord approvals for which a public hearing does not occur~~ and he shall have the authority to: issue a written order to remedy any noncompliance with a condition; bring legal action, including injunction, abatement or other appropriate action, to insure compliance with such conditions; and require a guarantee, in a form satisfactory to the county attorney, and in an amount sufficient for and conditioned upon the construction of any physical improvements required by the condition, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the county, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required occupancy or building permits.

(b) *Penalties for violation; right of entry.*

(1) Any person who violates this chapter or fails to comply with any conditions of zoning and development approvals ~~and substantial accord approvals for which a public hearing does not occur~~, other than those provisions set forth in section 19-6, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than \$10.00 and not more than \$1,000.00.

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(5) If the director of planning determines that any person has violated this chapter or failed to comply with any condition of a zoning or development approval ~~or of a substantial accord approval for which a public hearing does not occur~~, then he shall serve upon that person a notice to comply by either:

- a. Delivering the notice to the person by hand; or
 - b. Mailing the notice by first class mail to the last known address of the person.
- The notice shall set forth the nature of the violation or failure to comply. Upon failure of the person to remedy the violation, comply with the condition or receive an extension within ten days after the date of delivery or mailing of the notice, the person shall be subject to the penalties set forth above. With respect to violations or failures to comply involving portable signs or the parking or display of motor vehicles, the person shall remedy the violation or comply with the condition within 24 hours of service of the notice or receive an extension, or the person shall be subject to the penalties above.

Sec. 19-6. Civil penalties for certain violations.

(a) Any violation of the following provisions shall be punishable by a civil penalty of not more than \$100.00 for the initial summons and not more than \$250.00 for each additional summons:

(1) Operation of a business that is not a home occupation, on a lot or parcel inside or outside of a dwelling unit or accessory building, in any R, R-TH, R-MF or A district, without a special exception or conditional use.

(2) Violation of any condition of zoning and development approvals and substantial accord approvals ~~for which a public hearing does not occur~~ that relates to the hours of operation of the use of land or that relates to reduction or control of noise from the use of land.

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Sec. 19-24. Applications.

- (a) (1) Any application for zoning approval (~~except substantial accord~~), or modification to development standards or requirements, may be initiated by resolution of the board of supervisors; by motion of the planning commission; or by petition of the property owner, contract purchaser with the property owner's written consent, or the property owner's agent, with the property owner's written consent. An application for substantial accord of a County facility may also be initiated by the Director of any County Department or County Office and by School Board administration with the approval of the School Board.

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- (c) Each application shall have attached a list of names and addresses of all persons owning any adjacent property to include property across any street, road, railroad right-of-way, body of water or political boundary. In addition, if the property is

situated at or within 100 feet of the intersection of any two or more roads or highways or within 100 feet of the intersection of the right-of-way of any two railroads, the names and addresses of all property owners situated at all corners of the intersection shall be furnished. The information shall be obtained from the assessor's records.

(d) Any applicant, other than one seeking to modify development standards or requirements, shall furnish the following information:

- (1) A list of the names and addresses of all persons owning any legal or equitable interest in the real property which is the subject of the application or petition as a title owner, lessee, easement owner, contract purchaser, assignee, optionee, licensee or noteholder, including trustees, beneficiaries of trusts, general partners, limited partners and all other natural or artificial persons owning any such interest; however, the names and addresses of governmental entities and public service companies owning recorded easements over the subject property need not be disclosed.
- (2) If any of the persons disclosed under section 19-24(d)(1) is a corporation, then the application shall also list the names and addresses of any shareholders who own ten percent or more of any class of stock issued by such corporation and, if such corporation has ten or fewer shareholders, a list of the names and addresses of all the shareholders. If any of the persons disclosed under section 19-24(d)(1) is a partnership, joint venture, trust or other artificial person other than a corporation, then the application shall also list the names and addresses of any persons having any interest therein equal to ten percent or more of the total of all such interests and, if ten or fewer persons own all such interests, a list of the names and addresses of all such persons. For any corporation, partnership, joint venture, trust or other artificial person whose owners are unknown to the applicant and whose identities cannot be ascertained by the exercise of due diligence and for any corporation that has more than 100 shareholders or whose stock is regularly traded on a stock exchange or in the over the counter market, the applicant may so certify in lieu of providing a list of its stockholders or other persons having an interest therein.

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Sec. 19-25. Fees.

The following fees, which include the costs of hearings, advertisements and notices when required, shall be deposited simultaneously with the filing of the application:

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- (k) Substantial accord determinations:
 - (1) Existing zoning R, R-TH, R-MF, MH or A classification: ...3,100.00

- a. ~~Planning commission hearing . . . 3,100.00~~
 - b. ~~Administrative determination . . . 450.00~~
- (2) Existing zoning O, I or C classification: 1,540.00
- a. ~~Planning commission hearing . . . 1,540.00~~
 - b. ~~Administrative determination . . . 240.00~~
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Sec. 19-301. Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

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Substantial accord: A determination pursuant to Va. Code §15.2-2232, the County's Charter and the County's Substantial Accord Policy that certain proposed public features, uses areas, structures and facilities are substantially in accord with the County's Comprehensive Plan.

Zoning approval: Includes conditional use, conditional use planned development, conditional zoning, variance, special exception, substantial accord ~~for which a public hearing occurs~~, mobile home permit and rezoning approvals.

- (2) *That these ordinances shall become effective immediately upon adoption.*